To: Katharine Macgregor[katharine_macgregor@ios.doi.gov]
Cc: Hawbecker, Karen[karen.hawbecker@sol.doi.gov]; Brown, Laura[Laura.Brown@sol.doi.gov]; Kathleen Benedetto[kathleen_benedetto@ios.doi.gov]
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Hi Kate-
Per our discussion yesterday, attached is the mining law primer prepared by Karen. Note that it was last updated in 2008.

thanks!

Aaron G. Moody
Assistant Solicitor, Branch of Public Lands
Division of Land Resources
Office of the Solicitor
U.S. Department of the Interior
202-208-3495

INTRODUCTION TO THE MINING LAW

Karen Hawbecker
Assistant Solicitor
Branch of Onshore Mining & Reclamation
Division of Mineral Resources
Office of the Solicitor
U.S. Department of the Interior
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I. The History of the Mining Law

A. Pre-Mining Law Days—in the early American colonies, the British crown granted mineral lands subject to a perpetual reservation by the crown of what amounted to an in kind royalty. After independence, the Land Ordinance of 1785 was the first congressional action on the subject of mineral lands. It established the rectangular system of cadastral surveys. In making these surveys, the surveyors were required to note all mines, salt licks, and mill seats that should come to their knowledge. The 1785 Act also reserved to the United States one third of the minerals developed from gold, silver, lead and copper mines on the public lands, to be disposed of as Congress would thereafter direct. In the nineteenth century, other laws reserved salt springs and lead mines from sale. The wartime need for lead for bullets generated Congress's first mineral policy adopting a leasing system for lead deposits on federal lands, mostly in the Midwestern states. However, Congress abandoned leasing in 1846 for public sales of mineral lands in Illinois, Arkansas, Wisconsin and Iowa. At the same time, Congress began to classify federal lands in two categories mineral and non mineral lands. Congress retained the mineral lands but allowed grants of non mineral lands to settlers (preemption and homestead acts), railroads (1862 Railroad Act) and the states (school land grants and Carey Act lands). When gold was discovered in the Sierra Nevada in 1848, Congress had not yet established any generally applicable mining law. The miners had no legal authority for the mining they did on federal lands. They, nevertheless, established their own varying local mining district rules that fixed the boundaries of the district, the size of the claims, the number of claims allowed to an individual, the manner in which claims should be located, worked and recorded, the amount of work necessary to secure title, and the circumstances under which a claim would be considered abandoned.

B. 1866 Lode Law—the legislative history for the 1866 Lode Law reflects a debate between the western and eastern congressmen regarding the best method to dispose of the United States' mineral lands. The eastern contingent favored greater government control through leasing or selling the minerals. The western contingent favored free access for mineral exploration without advance notice or governmental permission and a location system that would recognize the pre existing mining claims located on the public lands. The western contingent won out. The Lode Law was similar to the miners' rules regarding claim size, the number of claims allowed to an individual, and the manner in which claims could be located. The Lode Law applied only to veins or lodes "bearing gold, silver, cinnabar, or copper." It authorized the location of lode mining claims and allowed patenting at $5 per acre after the miner expended at least $1000 in improvements. Claimants could locate only one 200 foot long location per lode together with a reasonable quantity of surface for the convenient working of the same as fixed by local rules . . . ." The discoverer of the lode could locate an additional claim of 200 feet in length. **Statute:** Lode Law of 1866, ch. 262, sec. 4, 14 Stat. 251 (1866).

C. 1870 Placer Act—this Act amended the 1866 Lode Law to include location of placer deposits. This included "all forms of deposit, excepting veins of quartz or other rock in place." Placer claims were not to exceed 160 acres for any one person or association. The purpose for the Act was to extend the principle of the homesteading preemption laws to placer mines in the same way Congress had applied the principle to lode mines. 42 Cong. Globe, 41st Cong., 2d Sess. 3054 (1870). Payment for patent was set at $2.50 per acre. **Statute:** Placer Act of 1870, ch. 235, sec. 12, 16 Stat. 217 (1870).

D. 1872 Mining Law—Congress made a variety of amendments to the 1866 Lode Law and the 1870 Placer Act when enacting the 1872 Mining Law. For example, the size of individual lode claims was increased to 1500 feet in length. In addition, Congress removed the limitation on the number of claims per person. Congress also added a mill site provision. Although more widely applicable at first, the Mining Law today applies only to hardrock minerals such as gold, silver, copper, molybdenum, uranium, nickel, lead, zinc, cobalt, and mercury. **Statute:** Mining Law of 1872, ch. 152, sec. 10, 17 Stat. 91, 30 U.S.C. §§ 22 *et seq*. *See* discussion below about contents of Mining Law.

II. Amendments to the Mining Law

A. Building Stone Act of 1892—Congress enacted this law to define the proper method of locating mining claims for building stone deposits. The lands must be chiefly valuable for building stone and must be entered as placer claims. **Statute:** 27 Stat. 348; 30 U.S.C. § 161.

B. Oil Placer Act of 1897—opened lands that were chiefly valuable for petroleum or other mineral oils to placer location under the Mining Law. Impliedly repealed by the Mineral Leasing Act of 1920. **Statute:** 29 Stat. 526.

C. Saline Placer Act of 1901—opened lands containing salt springs or that were chiefly valuable for salt deposits to placer location under the Mining Law. The law explicitly limits a person to one salt claim. Impliedly repealed by the Mineral Leasing Act of 1920. **Statute:** 31 Stat. 745.

D. Mineral Leasing Act of 1920—Congress enacted this law because of growing demand for fuel and the need to have government control over its development in wartime. The MLA, as amended, provides that the Secretary of the Interior may dispose of deposits of coal, phosphate, sodium, potassium, oil, oil shale, gas, Louisiana and New Mexico sulphur, potash, and Oklahoma asphalt only through leasing. *See* Multiple Mineral Development Act of 1954, 30 U.S.C. §§ 521 531, regarding conflicts between a leasehold and a mining claim on the same ground. The Multiple Mineral Development Act is also known among BLM staff as P.L. 585. **Statute:** 30 U.S.C. §§ 181 *et seq.* **Regulation:** Part 3100 Oil and Gas Leasing; Part 3400 Coal Leasing; Part 3500 Other Solid Minerals Leasing (other than oil shale).

E. Materials Act of 1947—gives the Secretary of the Interior authority to sell by competitive contract mineral materials including but not limited to common varieties of sand, stone, gravel, pumice, pumicite, cinders, and clay. The Materials Act also authorizes the Secretary to permit Federal, State or Territorial governments and municipalities, as well as non profit organizations, to remove mineral materials from the public lands without charge if they are to be used for other than commercial or industrial purposes or resale. Does not apply in national parks, national monuments or Indian lands. **Statute:** 30 U.S.C. §§ 601 604. **Regulation:** Part 3600 Minerals Materials Disposal.

F. Surface Resources Act of 1955—removes petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, and cinders from the operation of the Mining Law. The law expressly limits the use of mining claims to prospecting, mining or processing operations and uses reasonably incident thereto. The law also authorizes the United States to manage and dispose of vegetative surface resources and to manage other surface resources so long as the United States' management activities do not endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto. **Statute:** 30 U.S.C. §§ 611 615; also known among BLM staff as P.L. 167.

G. Geothermal Steam Act of 1970—authorizes the Secretary of the Interior to issue leases for the development of geothermal steam and associated geothermal resources in public, withdrawn and acquired lands, as well as in any national forest. Natural mineral spring water is not locatable under the Mining Law. *Robert L. Beery*, 25 IBLA 287 (1976); *Pagosa Springs*, 1 Pub. Lands. Dec. 562 (1882). **Statute:** 30 U.S.C. §§ 1001 *et seq.*

H. Federal Land Policy and Management Act of 1976—amends the Mining Law in four ways. **Statute:** 90 Stat. 2743 (1976); 43 U.S.C. §§ 1701 *et seq.*

a. Section 302 states that no provision of FLPMA will amend the Mining Law or impair locators' rights, including rights of ingress and egress, except as provided in the last sentence of section 302(b), section 314, section 603 and section 601(f). The last sentence of section 302(b) states, "In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." **Statute:** 43 U.S.C. § 1732. **Regulation:** Use and Occupancy Under the Mining Laws, 43 C.F.R. Subpart 3715 (2004); Surface Management, 43 C.F.R. Subpart 3809 (2004).

b. Section 314 states that claimants must record the location of all mining claims, mill sites and tunnel sites and file annual assessment work filings on or before December 30 to maintain those claims or sites. For all claimants except qualified small miners, FLPMA's annual filing requirement has been superseded by the maintenance fee requirement. **Statute:** 43 U.S.C. § 1744. **Regulation:** 43 C.F.R. Part 3833, Subpart A Recording Process; Part 3835, Subpart C Annual FLPMA Documents (2004).

c. Section 601(f) this provision subjects mining claims located within the California Desert Conservation Area to "such reasonable regulations as the Secretary may prescribe to effectuate the purposes of [section 601]." Any patent continues to be subject to such regulations. The section states that the purpose of the section is "to provide for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple use and sustained yield, and the maintenance of environmental quality." The regulations are to take reasonable measures to "protect the scenic, scientific, and environmental values of the public lands of the California Desert Conservation Area against undue impairment, and to assure against pollution of the streams and waters within the California Desert Conservation Area." **Statute:** 43 U.S.C. § 1781. **Regulation:** 43 C.F.R. § 3809.5 definition of *unnecessary or undue degradation*, subparagraph (3). No regulations currently define the *undue impairment* provision in section 601(f).

d. Section 603 this provision required that the Secretary of the Interior, within the 15 years after FLPMA's enactment, review roadless areas of five thousand acres or more and identify those having wilderness characteristics and make recommendations for wilderness designations to the President. The President was then to make recommendations to Congress regarding wilderness designations. Section 603 states that during the wilderness review period and until Congress determines otherwise, the Secretary is to manage the review areas, including mining claims, "in a manner so as not to impair the suitability of such areas for preservation as wilderness" subject to "the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted" on the date of FLPMA's enactment. During the review period, unless previously withdrawn, the lands continue to be subject to appropriation under the mining laws, unless withdrawn by the Secretary under section 204 of FLPMA "for reasons other than preservation of their wilderness character." Once designated, the lands are administered as provided in the Wilderness Act. **Statute:** 43 U.S.C. § 1782. **Regulation:** 43 C.F.R. Subpart 3802.

I. Energy Policy Act of 1992—under the Energy Policy Act (EPA), all holders of oil shale claims, except those who had filed patent applications and received first half final certificates as of the date the EPA was enacted, are required to pay a $ 550 fee per claim per year to maintain possession as against the United States until such time as patent may issue or the claim is otherwise invalidated. The Act required the Secretary of the Interior to give oil shale claimants notice of the EPA's requirements and required claimants who had not filed a patent application for which first half final certificate had been issued to elect whether they would proceed to limited patent or maintain the claim by paying the annual fee. The oil shale related provisions of the EPA are of little concern at this time. All oil shale claims have been invalidated. There is a pending lawsuit in D.C. District Court in which the plaintiff is challenging the BLM Utah State Office's decision invalidating the last 156 oil shale claims on the public lands. **Statute:** 30 U.S.C.A. § 242 (West Supp. 2005). **Regulation:** 43 C.F.R. § 3834.11(b) (2004).

J. Appropriations Acts—appropriations acts have become Congress's favorite tool for amending the Mining Law. The following two changes to the Mining Law have been enacted in successive appropriations acts since 1992.

1. Maintenance fee—since 1992, Congress has required mining claimants to pay an annual maintenance fee for each mining claim, mill site, and tunnel site, and a location fee for each newly located claim and site. Congress has done this through riders on various appropriations acts for the Department of the Interior. The current authorization ends in fiscal year 2008. The Department has administratively increased the location fee from $25 to $30 and the maintenance fee from $100 to $125. *See* 69 Fed. Reg. 40,294 (July 1, 2004); 70 Fed. Reg. 38,192 (July 1, 2005). **Statute:** 30 U.S.C.A. §§ 28f. k. (West Supp. 2005).

2. Patenting moratorium since 1994, Congress has included a provision in the annual Interior appropriations act that prohibits the Department from expending funds to accept new mineral patent applications and to process those applications which had not yet reached a defined point in the patent review process. The most recent enactment was the Interior and Related Agencies Appropriations Act for fiscal year 2005, Division E, Title I, Section 120 of Public Law No. 108 447. The Department has continued to process those applications that are grandfathered or excepted from the patent funding moratorium.

III. **Quick Mining Law Tour—finding the most commonly referred to sections in the Mining Law related to:**

A. Locating a lode claim—

1. 30 U.S.C. § 22—opens all valuable mineral deposits belonging to the United States to exploration and purchase by United States citizens "under regulations prescribed by law" and according to local customs and rules that are not inconsistent with federal laws. **Regulation:** 43 C.F.R. Part 3832, Subparts A & B (2004).
2. 30 U.S.C. § 23—states that lode claims may not exceed 1500 feet in length and 600 feet in width (300 feet on either side of the vein) and must have parallel end lines.
3. 30 U.S.C. § 24—describes acceptable proofs of citizenship for individuals and corporations.
4. 30 U.S.C. § 26—states that validly located mining claims establish an exclusive right of possession and enjoyment of all the surface included within the lines of their location, and of all veins, lodes, and ledges within the location, including extra lateral rights. This exclusive right of possession is for mining purposes only.
5. 30 U.S.C. § 28—states that locations must be distinctly marked on the ground so that the boundaries are easily traced. Location notices are to contain the names of locators, location date, and land description.

B. Locating a placer claim—

1. 30 U.S.C. § 35—provides that placer claims may be located for mineral deposits that are not properly located as a lode claim. The distinction between lode and placer claims has been litigated often. Placer claims are to be located in a manner similar to lode claims. This section states that individual placer locations may not exceed twenty acres in size. **Regulation:** 43 C.F.R. Part 3832, Subparts A & B (2004).

2. 30 U.S.C. § 36—provides that association placer locations may not exceed 160 acres in size. Lands covered by a single placer claim must be contiguous. **Regulation:** 43 C.F.R. § 3832.22(b)(2) (2004).

C. Locating a mill site—30 U.S.C. § 42—authorizes mining claimants to locate and patent mill sites on non mineral land to be used or occupied for mining or milling purposes in association with lode or placer claims (1960 amendment allowed mill sites to be located in association with placer claims). Also authorizes independent quartz mills or reduction works. Mill sites may not exceed five acres in size. Claimants are not limited to one mill site per mining claim. Patentees must pay $5 per acre for mill sites patented in association with lode claims and $2.50 per acre for mill site patented in association with placer claims. **Regulation:** 43 C.F.R. Part 3832, Subpart C (2004).

D. Tunnel sites—30 U.S.C. § 27 states that a claimant who runs a tunnel to discover or develop a vein or lode has a possessory right to the veins or lodes within 3000 feet from the face of the tunnel. Tunnel sites are subsurface rights of way. **Regulation:** 43 C.F.R. Part 3832, Subpart D (2004).

E. Assessment work—30 U.S.C. § 28—requires mining claimants to conduct labor worth $100 each year. The provision states that failure to conduct this annual labor will open the lands to claim location by others. It also provides a means by which co owners

may "publish out" a co owner who has failed to contribute his or her fair share toward the annual labor requirement. By law, the assessment work year runs from noon on September 1st to noon on the following September 1st. For example, the assessment year 2004 ran from noon on September 1, 2003, to noon on September 1, 2004. Normally, assessment years are designated by the year in which the assessment year ends. **Regulation:** 43 C.F.R. Part 3836 (2004).

F. The maintenance fee—30 U.S.C.A. §§ 28f.-k.(West Supp. 2005)—requires mining claimants to pay a location fee for newly located mining claims and sites and an annual maintenance fee for each mining claim or site. If a claimant fails to timely pay either fee, the affected mining claim or site is deemed null and void by operation of law. The maintenance fee may be waived for claimants who hold ten or fewer claims. These small miners must comply with the Mining Law's assessment work requirements and FLPMA's annual filing requirements. The Department recently increased the location fee from $25 to $30 and the maintenance fee from $100 to $125. *See* 69 Fed. Reg. 40,294 (July 1, 2004); 70 Fed. Reg. 38,192 (July 1, 2005). Congress has authorized BLM to collect these fees through fiscal year 2008. If you are reading this document after fiscal year 2008, be certain to check for recent legislation that may have extended this authority. The Energy Policy Act requires mining claimants to pay an annual $550 fee for oil shale claims. 30 U.S.C. § 242; 43 C.F.R. § 3834.11 (2004). **Regulation:** 43 C.F.R. Part 3834 (2004).

F. Acquiring a delinquent co-claimant's interests—30 U.S.C. § 28—provides a means by which co owners may "publish out" a co owner who has failed to contribute his or her fair share toward the annual labor requirement. This means that the contributing owners may give notice to the delinquent co owner of his or her failure to contribute, in writing or by newspaper publication for 90 days. If the delinquent co owner fails to contribute after those 90 days, the delinquent co owner's interest in the mining claim becomes the property of the contributing owners. **Regulation:** 43 C.F.R. Part 3837.

G. Patenting—30 U.S.C. § 29—describes the requirements for filing and obtaining a patent, which, under the Mining Law, is a title conveyance from the United States to a private party in fee simple absolute. A claimant must: (1) file a patent application that shows he or she has complied with the Mining Law in locating and maintaining the mining claim; (2) file a survey of the claim, (3) post an application notice on the claim, (4) file affidavits of two persons that this notice has been posted, (5) file a copy of the notice in the appropriate BLM office, (6) publish notice of the application in a newspaper nearest to the claim for 60 days, and, if no adverse claim exists, (7) pay $5 per acre for lode claims. Patentees must pay $2.50 per acre for placer claims. 30 U.S.C. § 37. Land status and title determinations conducted by a BLM Land Law Examiner, validity determinations conducted by a BLM mineral examiner, and the legal review conducted by the Solicitor's Office are key components of the patenting review process. Since 1994, Congress has prohibited the BLM from accepting any new patent applications. See Section II above.

H. Filing an adverse claim—30 U.S.C. § 30—if an adverse claim is filed during the patenting publication period provided for in 30 U.S.C. § 29, the adverse claimant must file a claim in a court of competent jurisdiction within 30 days. When the court proceeding is over, the judgment of the court is to be filed with the appropriate BLM office and patent will issue to the parties according to their rights.

IV. The Mining Law's Application to Federal Lands

A. Public Domain—with some exceptions, the general rule is that the Mining Law applies to public domain lands only. The exceptions are acquired lands that are expressly opened to the operation of the Mining Law by statute or public land order.

1. What are public domain lands? Public domain lands are lands that have remained in federal ownership since the original acquisition of those lands by the United States through such means as cession from the original 13 colonies to the Federal government, the Louisiana Purchase, the Gadsen Purchase and the Treaty with Mexico. They are lands that were retained by the federal government upon admission of a state and remain unoccupied, unappropriated, and unreserved. In addition, they are lands that are open to settlement, sale or disposition under the public land laws and have not been withdrawn or reserved for any governmental purpose. 63 Am. Jur. 2d *Public Lands* § 1 (1972). *See also Federal Power Comm'n v. Oregon*, 349 U.S. 435, 434 44 (1955); *Kindred v. Union Pac.*, 225 U.S. 582, 596 (1912). Public land laws are statutes providing for the sale, grant or other disposition of public lands. For purposes of this paper, the term "public land laws" is intended to include all general land laws, including the Mining Law. Although originally part of the public domain, Congress removed Michigan, Wisconsin, Minnesota, Missouri, and Kansas from the operation of the Mining Law in 1873 and 1876. 17 Stat. 465; 19 Stat. 52. The term "public domain lands" is distinct from the term "public lands," as used in FLPMA. In FLPMA, "public lands" is defined as "any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership," excepting the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos. 43 U.S.C. § 1702(e). *See State of California v. FERC*, 966 F.2d 1541, 1557 (9th Cir. 1992).

2. What are *not* public domain lands? Whenever a tract of public domain land has been legally appropriated or disposed of for any purpose, from that moment, it becomes severed from the public domain. The following are descriptions of some of the larger categories of lands that have been severed from the public domain.

a. Acquired Lands—lands that have been previously severed from the public domain and are re acquired by the United States through purchase, condemnation, gift, or exchange. Even though acquired lands are not part of the public domain, they may nevertheless be open to the operation of the Mining Law by statute or public land order.

b. Navigable Submerged Lands—lands within the boundaries of each State that are covered by non tidal waters that were navigable at the time the State entered the union, up to the ordinary high water mark, are not public domain lands, unless reserved by Congress before statehood, and are not open to location under the Mining Law. These submerged lands belong to the State in which they are found and were conveyed to them upon statehood. **Statute:** Submerged Lands Act of 1953, 43 U.S.C. §§ 1301 1315.

c. State Land Grants

i. School Land Grants—the purpose of most of the land grants to the states by the federal government upon admission to the Union was to establish a source of income for public education. Lands granted to the states for this purpose are no longer owned by the federal government and are, therefore, not open to the operation of the Mining Law. Some states were granted two sections (sections 16 and 36) as school land grants upon admission. Others, including Arizona, New Mexico and Utah, were granted four sections (sections 2, 16, 32 and 36). **Statute:** 43 U.S.C. §§ 851 52 (providing a means by which states, except Alaska, can obtain replacement lands for lands in the school land grant sections that were occupied or appropriated by homesteaders before the lands were surveyed and found to be in the school land grant sections).

ii. Carey Act Lands—the Carey Act of 1894 authorized grants for reclamation of desert lands. To encourage State, as well as private irrigation efforts, the Act offered certain western States up to one million acres of arid public lands if occupying settlers would irrigate and cultivate the land. Each private party entry is limited to 160 acres. After the Secretary approves a state's grant application, the lands are segregated from mineral entry for a period of 3 to 15 years. Lands conveyed under the Carey Act are no longer owned by the federal government and are, therefore, not open to the operation of the Mining Law. **Statute:** 28 Stat. 422; 43 U.S.C. §§ 641 *et seq.*; repealed by FLPMA. **Regulation:** 43 C.F.R. § 2091.4 3; 43 C.F.R. Part 2610 (2004).

d. Railroad Grant Lands—Railroad Acts of 1862 and 1864 under the 1862 Act, which was signed by President Abraham Lincoln, the Union Pacific and Central Pacific railroad companies received from the federal government a 400 foot wide right of way, ten alternate sections of land per mile of track on both sides of the line and first mortgage, 30 year loans of $16,000 per mile in flat country, $32,000 in foothills, and $48,000 per mile in the mountains. In 1864, Congress doubled the land grant and eased the terms of the government loans. Railroad grant lands were supposed to be nonmineral lands, though some mineral lands were conveyed because they were not known to be mineral at the time of the conveyance. These grant lands are no longer owned by the federal government and are, therefore, not open to the operation of the Mining Law. **Statute:** 12 Stat. 489; 13 Stat. 358.

e. Early Homestead Grants—the Homestead Act of 1862 offered farmers 160 acres of unappropriated surveyed public lands for settlement for $1.50 per acre if they resided on the property for six months, or for nothing after five years' residence. Congress exempted from entry under these Acts public lands classified as valuable for coal. *Before enactment of the Stock raising Homestead Act in 1916*, lands conveyed under this and other early homestead acts did not reserve the mineral estate to the United States because the lands were supposed to be non mineral lands. Early homestead grant lands that conveyed fee

simple title are no longer owned by the federal government and are, therefore, not open to the operation of the Mining Law. These homestead acts were repealed by FLPMA. **Statute:** 12 Stat. 392 (1862); 35 Stat. 639 (1909); 36 Stat. 513 (1910).

f. Desert Land Entries—the purpose of the desert land statutes is to encourage reclamation by irrigation of the arid and semi arid public lands in the Western United States. In order to qualify for entry under the desert land law, the public lands must be surveyed, unreserved, unappropriated and nonmineral in character. When BLM allows or approves a desert entry, the lands are segregated from the operation of the Mining Law. If canceled or relinquished, the lands may be reopened by public land order published in the *Federal Register*. When conveyed, the patents do not reserve locatable minerals and are, therefore, not open to the operation of the Mining Law. **Statute:** 19 Stat. 377 (1877); 26 Stat. 1096 (1891); 43 U.S.C. §§ 321 329. **Regulation:** 43 C.F.R. § 2091.4 1; 43 C.F.R. Subpart 2520 (2004)

g. Indian Allotments—these conveyances are authorized by section 4 of the General Allotment Act of 1887, as amended. They cannot exceed 40 acres of irrigable land, 80 acres of nonirrigable agricultural land, or 160 acres of nonirrigable grazing lands to any one Indian. The lands must be nonmineral in character. Allotments do not reserve locatable minerals and are, therefore, not open to the operation of the Mining Law. **Statute:** 24 Stat. 389 (1877); 26 Stat. 794 (1891); 36 Stat. 859 (1910); 25 U.S.C. § 336. **Regulation:** 43 C.F.R. Part 2530 (2004).

3. *Where* are public domain lands and acquired lands that are open to mining claim location?—the states that contain public domain and acquired lands that are open to the operation of the Mining Law include: Alaska, Arkansas, Arizona, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming. 43 C.F.R. § 3811.2 1.

B. Reserved Public Domain—Reserved lands are lands removed from the public domain and immediately designated to some predetermined purpose. C. Wheatley, *Study of Withdrawals and Reservations of Public Domain Lands* at A 1 (1969) (prepared for the Public Land Law Review Comm'n). *See also* L. Mall, *Public Land and Mining Law* 120 (1981). Reservations include national parks, national forests, Indian reservations, and military reservations. *See id.* at 107 10, 121. With some exception, reserved lands are not open to the operation of the public land laws, including the Mining Law.

1. National Parks—Congress has withdrawn each national park through a specific act, subject to valid existing rights. Lands in national parks are withdrawn from leasing, location, entry and patent under the mining and mineral leasing laws, unless specific language in the act creating the park subjects the lands to the mining laws. Mining claims that were located before creation of a park are subject to the same maintenance requirements as apply to other mining claims. Mining claims within National Parks are managed under the Mining in the Parks Act. The BLM's 3809 regulations do not apply to National Park System lands. **Statute:** Mining in the Parks Act of 1976, 16 U.S.C. §§ 1901 1912. **Regulation:** 43 C.F.R. §§ 3809.2(b); 3811.2 2 (2004).

2. National Forest System Lands—

   a. Forest Management Act of 1897—opens the lands reserved as national forests to the operation of the Mining Law, unless withdrawn by a secondary withdrawal. **Statute:** 30 Stat. 11, 34 36. **Regulation:** 43 C.F.R. §§ 3811.1, 3811.2 4 (2004).

   b. Weeks Act of 1911—authorized the federal government to purchase lands for stream flow protection and to maintain the acquired lands as national forests. National forests acquired under the Weeks Act are not open to the operation of the Mining Law. Lands acquired under the Weeks Act are the core of the Southern and Eastern National Forest System lands. **Statute:** 36 Stat. 962; 16 U.S.C. §§ 513 15; 16 U.S.C. § 521a (lands acquired, not by exchange, within Forest Service boundaries are subject to Weeks Act and, therefore, not open to location).

   c. General Exchange Act of 1922—the Act of March 20, 1922, provided that "when the public interests will be benefited thereby" the United States might accept title to any lands within the exterior boundaries of the national forests which are chiefly valuable for national forest purposes. In exchange, the party conveying such lands would receive either comparable nonmineral lands, or the authority to cut and remove an equal value of timber within the national forest of the same State. Unless the mineral estate is reserved by the private exchange partner, lands that are acquired by forest exchange become part of the National Forest System upon acceptance of title, and are open to location under the Mining Law and mineral leasing upon acquisition, without the necessity of a formal order, unless the surrounding lands have been withdrawn by a secondary authority. **Statute**: 16 U.S.C. §§ 485, 486; 43 U.S.C. § 1716 (c) & (i). **Regulation**: 36 C.F.R. §§ 251.9 *et seq.*; 36 C.F.R. Part 254 (2004); 43 C.F.R. § 3811.2 9 (2004).

3. Indian Reservations—the Mining Law does not apply to tribal reservations. **Regulation:** 43 C.F.R. § 3811.2 3 (2004). See above for discussion of Indian Allotments.

4. Military Reservations—Lands that have been reserved for military purposes are not normally open to the operation of the Mining Law. The Engle Act places all minerals in lands that are withdrawn for use by the Department of Defense, except those reserved specifically as naval petroleum, naval oil shale, or naval coal reserves, under the jurisdiction of the Secretary of the Interior for disposition under the mining and mineral leasing laws, in consultation with the Secretary of Defense. If the Secretary of Defense determines that disposition of or exploration for minerals within a Defense reservation is inconsistent with the military use of the lands, no such disposition is allowed. Mineral patents issued on these lands convey only the locatable minerals. Be conscious of the fact that Congress has passed a number of other laws directed to specific military reservations that have provisions unique to those reservations regarding mineral entry. **Statute:** Pub. L. No. 99 606; Naval Petroleum Reserves Production Act, 42 U.S.C. §§ 6501 *et seq.*; 43 U.S.C. §§ 155 158 (Engle Act).

C. Acquired Lands—Acquired lands are federally owned lands that were acquired from nonfederal owners by purchase, condemnation, gift or exchange. Although they are not part of the public domain, certain legislation opens some acquired lands to the Mining Law's operation.

1. FLPMA–Sections 205 & 206—as a general rule, lands acquired under sections 205 (Acquisitions) and 206 (Exchanges) are open to location under the Mining Law. However, there are some special considerations for lands acquired through an exchange. First, lands acquired by the United States under section 206 are automatically segregated from appropriation under the public land laws, including the mining law, for 90 days after title is accepted. At the end of those 90 days, the lands are open to the operation of the Mining Law, unless the lands have been withdrawn by other appropriate action under FLPMA or other applicable law. **Statute:** 43 U.S.C. §§ 1715, 1716(i). **Regulation:** 43 C.F.R. §§ 3809.2(a); 3809.31(e) (2004).

2. Taylor Grazing Act passed in 1934 "to stop injury to the public grazing lands by preventing overgrazing and soil deterioration," and to provide for the orderly use, improvement and development of the public range. The Act authorized the Secretary to create grazing districts from any part of the vacant, unappropriated, unreserved public domain and a permitting system. Creation of a grazing district or issuance of a grazing permit does not create any right, title, interest, or estate in or to the lands. 43 U.S.C. § 315b. At the outset, the Act provided for the withdrawal from settlement of the lands within the proposed boundaries of the grazing districts, but did not restrict prospecting, locating, developing, mining, entering, leasing, or patenting the mineral resources within grazing districts under applicable laws. 43 U.S.C. § 315e. The Act provided for the possibility of land exchanges to consolidate the districts, in which event, either party could make reservations of minerals, easements, or rights of use. Lands acquired by the United States under the authority of the Taylor Grazing Act must be formally opened for location under the Mining Law or mineral leasing by public land order. The Taylor Grazing Act exchange authority was repealed by FLPMA. **Statute**: 43 U.S.C. §§ 315, 315a 315r. **Regulation:** 43 C.F.R. § 3811.2 9 (2004).

3. General Exchange Act—unless the mineral estate has been reserved by the private exchange partner, lands that are acquired by the United States under this Act become part of the National Forest System upon acceptance of title, and are, therefore, open to location under the Mining Law and mineral leasing upon acquisition, without the necessity of a formal order. See General Exchange Act entry above, in National Forest System lands section.

4. O & C Lands—in 1916, Congress declared that lands that had been granted in 1866 to the State of Oregon for the building of railroads by the Oregon and California Railroad Company were revested in the United States. In 1948, Congress reopened these revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands to the operation of the Mining Law, except power sites on those lands that were later reopened to the operation of the Mining Law by the Mining Claims Rights Restoration Act of 1955. *See* power site discussion below. All claims located on power sites on revested O & C lands are subject to the provisions of the Act of April 8, 1948. 30 U.S.C. § 621(a). **Statute:** 39 Stat. 218; 62 Stat. 162. **Regulation:** 43 C.F.R. § 3811.2 5; 43 C.F.R. Subpart 3821 (2004).

D. Severed Estates—when the United States conveys lands subject to a mineral reservation that includes locatable minerals, the mineral estate remains open to location of mining claims under the Mining Law. 43 C.F.R. § 3809.2 (2004).

1. Stock-Raising Homestead Act of 1916—the now repealed Stock Raising Homestead Act authorized patenting of a maximum of 640 acres of public land to people who lived on the land for three years and made improvements on the land tending to increase the land value for stock raising purposes by not less than $1.25 per acre. SRHA patents are all subject to a reservation of "all the coal and other minerals" to the United States, along with the right to prospect for, mine, and remove the same in accordance with the mineral land laws in force at the time of the disposal. *See Watt v. Western Nuclear, Inc.*, 462 U.S. 36 (1983). These minerals reservations remain open to the operation of the Mining Law. Mining claimants are subject to certain notice and other requirements when locating and developing mining claims on SRHA lands. **Statute:** 43 U.S.C. §§ 291 302, repealed except 43 U.S.C.A. § 299 (West Supp. 2005); 30 U.S.C. § 54. **Regulation:** 43 C.F.R. § 3809.2; 43 C.F.R. Part 3838 (2004).

2. Pittman Underground Water Act of 1919—the now repealed Pittman Act authorized patenting of public lands to people who found underground water sources in the Nevada deserts, subject to a reservation of Aall the coal and other *valuable* minerals@ to the United States. *See BedRoc Ltd., LLC v. United States*, 541 U.S. 176 (2004). **Statute:** 41 Stat. 293 295, 43 U.S.C. " 351 355.

3. Color of Title Act of 1928—provides that a person who has held a tract of public land in good faith and in peaceful, adverse possession under claim or color of title may qualify for a patent if the possession was maintained for more than 20 years with valuable improvements or was initiated no later than January 1, 1901. The Act applies only to public land that is vacant, unappropriated, unreserved public domain that is subject to the public land laws. The Act does not apply, for instance, to withdrawn land, and land accreted to withdrawn land, nor does it apply to acquired land, nor to land reserved for Indians or military purposes. Patents issued under the Color of Title Act are limited to 160 acres in size. Except as provided in 43 U.S.C. § 1068b., patents issued under this Act reserve to the United States "coal and all other minerals contained therein." The reserved minerals on Color Title Act lands are open to the operation of the Mining Law. The Act precludes issuance of a patent under its provisions "for any tract to which there is a conflicting claim adverse to that of the applicant, unless and until such claim shall have been finally adjudicated in favor of such applicant." **Statute:** 45 Stat. 1069; 67 Stat. 228; 43 U.S.C. §§ 1068, 1068b. **Regulation**: 43 C.F.R. Subpart 2541 (2004); *see also* 43 C.F.R. §§ 3809.31(e); 3811.2 9 (2004).

4. Small Tract Act of 1938—this Act authorized the Secretary of the Interior to sell vacant, unreserved public lands in parcels not exceeding five acres to certain specified persons as long as the lands at issue were identified as chiefly valuable for residence, recreation, business, or community site purposes, and as long as the Secretary found that such sale (a) would not unreasonably interfere with the use of the water for grazing purposes; (b) nor unduly impair the protection of watershed areas; and (c) involved lands in reasonably compact form. Patents under the Act reserved all oil, gas, and other mineral deposits to the United States, together with the right to prospect for, mine, and remove the same. These mineral reservations are not open to the operation of the Mining

Law. **Statute:** Act of June 1, 1938, 52 Stat. 609, as amended by 59 Stat. 467 and 68 Stat. 239. Repealed by section 702 of FLPMA. **Regulation:** 43 C.F.R. § 3809.2(a) (2004).

5. FLPMA – Section 209—all title conveyances made under FLPMA authority, except land exchanges under section 206, must reserve to the United States all minerals in the lands, together with the right to prospect for, mine, and remove the minerals. These mineral reservations remain open to the operation of the Mining Law. Where the surface has already been conveyed or will be conveyed, if the mineral estate has no known value or the mineral reservation is interfering with or precluding non mineral development that is a more beneficial use of the land than mineral development, the Secretary may convey the mineral interest in those lands to the surface owner. **Statute:** 43 U.S.C. § 1719 (reservation and conveyance of minerals); 43 U.S.C. § 1713 (sales). **Regulation:** 43 C.F.R. Parts 2710 and 2720; 43 C.F.R. §§ 3809.2; 3809.31(e) (2004).

6. Airport Grants—grants made under section 516 of the Airport and Airway Improvement Act of 1982 reserve the locatable minerals, but are segregated from mineral entry. **Statute:** 49 U.S.C. § 2215. **Regulation:** 43 C.F.R. § 2091.4 2; 43 C.F.R. Part 2640 FAA Airport Grants (2004).

7. Recreation and Public Purposes Act of 1926—authorizes the Secretary of the Interior to lease or convey public lands for recreational and public purposes. Lands conveyed under this Act reserve the mineral estate. Those minerals are not open to the operation of the Mining Law. See below for additional discussion of this Act. **Statute:** 44 Stat. 741 (1926), 68 Stat. 173 (1954). **Regulation:** 43 C.F.R. Part 2740; 43 C.F.R. § 3809.2 (2004).

8. Coal Lands Acts of 1909 and 1910—in 1906, President Theodore Roosevelt withdrew from all forms of entry approximately 64 million acres of public land thought to contain coal. President Roosevelt then urged Congress to dispose of the surface to these lands separately from the minerals. Congress responded by enacting the Coal Lands Acts to allow homesteaders to obtain patents to public lands that the United States believed to be valuable for coal, while reserving the coal itself in federal ownership. The 1909 Act allowed individuals who had in good faith made agricultural entries on tracts of lands withdrawn as coal lands to obtain a patent subject to a reservation of the coal. The 1910 Act opened the remaining coal lands for entry under the homestead laws, while reserving the coal in the lands. Because lands conveyed under these statutes do not reserve any locatable minerals, the lands are not open to the operation of the Mining Law. **Statute:** 35 Stat. 844 (1909), 36 Stat. 583 (1910).

E. Withdrawn lands—Withdrawn lands are lands removed from the public domain for the purpose of maintaining the status quo. *See* 43 U.S.C. § 1702 (j) (FLPMA's definition of "withdrawal" states that withdrawals withhold "an area of Federal land from settlement, sale, location, or entry, under some or all of the general lands laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program."). As a general rule, lands which have been withdrawn from the public domain are no longer subject to some or all of the public land laws. Since most of the public land laws give the Secretary discretion regarding where, when, and how they are exercised, the motivation for many withdrawals is to suspend the operation of the Mining Law for a particular area. Nearly all withdrawals are subject to valid existing rights. There are notable exceptions.

Consequently, if a mining claim was located on lands that were subsequently withdrawn from the operation of the Mining Law, the mining claim may continue to exist if it was valid on the date of the withdrawal and continues to be maintained properly. If a mining claim is located on withdrawn lands after the withdrawal of those lands from the operation of the Mining Law, the claim is void *ab initio*. Because the language of withdrawal provisions can vary widely in statutes and public land orders, it is important to consult the specific provision applicable to the lands for which you are making any status determinations. Withdrawal statutes may also include patenting restrictions.

1. Executive Authority—in *United States v. Midwest Oil Co.*, 236 U.S. 459 (1914), the Supreme Court, citing historical precedent, i.e., "executive practice and congressional acquiescence," upheld the 1909 withdrawal by President Taft, without any statutory authority, of more than three million acres of public lands from mining location. President Taft sought to maintain oil reserves for Navy use. Although Congress criticized this as a usurpation of its own legislative power, it never rescinded the withdrawal. Under what became known as the "*Midwest Oil* doctrine" or the doctrine of implied executive authority, courts have held that the President, or his delegate, may withdraw lands from entry, settlement, or other forms of appropriation, including under the Mining Law, in order to protect the national interest. *See*, *e.g.*, *Portland General Elec. Co. v. Kleppe*, 441 F. Supp. 859, 861 62 (D. Wyo. 1977). This implied authority and other express authorities for the President to withdraw and reserve lands were explicitly repealed in section 704(a) of FLPMA in 1976. *See* H.R. Rep. No. 94 1163, 94th Cong., 2d Sess. 5 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6175, 6203. Whether the President possesses inherent constitutional power to withdraw land was discussed in *Midwest Oil* but never decided. *Wisenak, Inc. v. Andrus*, 471 F. Supp. 1004, 1008 (D. Alaska 1979). Under section 701(c) of FLPMA, certain lands do remain withdrawn or reserved by executive orders issued under the *Midwest Oil* doctrine and other repealed statutory authorities. *See* 43 U.S.C. § 1701 note (2000). The only significant withdrawal authority that is still exercised by the President is the Antiquities Act of 1906. 16 U.S.C. ' 431.

2. Secretarial Authority—

   a. Pickett Act of 1910—authorized the President to withdraw lands for water power sites, irrigation, classification of lands, or other public purposes. The President delegated his authority under the Pickett Act to the Secretary of the Interior in Executive Order No. 10355 (May 26, 1952). Metalliferous minerals in lands withdrawn under the Pickett Act remain open to exploration and purchase under the Mining Law. This Act was repealed by FLPMA. However, the thousands of withdrawals that were made under the authority of the Pickett Act are still effective. Only metalliferous minerals are locatable on lands withdrawn under the Pickett Act. Please note that Executive Order No. 10355 also delegated to the Secretary the President's implied authority to withdraw lands. In instances where the Secretary exercised this implied authority, metalliferous minerals were also withdrawn. **Statute:** 36 Stat. 847, as amended by 37 Stat. 497 (1912), 43 U.S.C. § 142.

   b. FLPMA—Section 204—authorizes the Secretary of the Interior to make, modify, extend, or revoke withdrawals by following the procedures outlined in section 204. This authority cannot be delegated below the Secretarial level of the Department. This section provides

for two year segregations while a withdrawal is considered by the Secretary. Segregations and withdrawals are distinct terms and should not be used interchangeably. *See also* section 603 of FLPMA, as discussed in the Wilderness section below. **Statute:** 43 U.S.C. § 1714.

c. FLPMA—Section 206—authorizes the Secretary to temporarily segregate from appropriation under the mining laws lands that are being considered for a land exchange. This section also provides that lands acquired by the United States under this section are automatically segregated from appropriation under the public land laws, including the mining law, for 90 days after title is accepted. At the end of those 90 days, the lands are open to the operation of the Mining Law, unless they have been withdrawn by other appropriate action under FLPMA or other applicable law. **Statute:** 43 U.S.C.A. § 1716(i) (West Supp. 2005).

d. Recreation and Public Purposes Act of 1926—authorizes the Secretary of the Interior to lease or convey public lands for recreational and public purposes. If a notice of realty action states that the lands are classified as suitable for lease or conveyance under this Act, the lands are segregated from appropriation under the public land laws, including the Mining Law. While classified, mining claims located on these lands are void *ab initio*. Lands conveyed under this Act reserve the mineral estate. Those minerals are not open to the operation of the Mining Law. Also, lands conveyed under this Act provide that the lands may revert to the United States if not used for the purposes for which the lands were conveyed or if used in a discriminatory fashion. **Statute:** 44 Stat. 741 (1926), 68 Stat. 173 (1954). **Regulation:** 43 C.F.R. Part 2740; 43 C.F.R. § 3809.2 (2004).

3 Congressional Acts

a. Wilderness—in the Wilderness Act of 1964, Congress authorized the designation of certain federally owned areas as "wilderness areas" if the areas were "undeveloped federal land retaining its primeval character and influence, without permanent improvements or human habitation" and were "untrammeled by man, where man himself is a visitor who does not remain." Once designated, these areas remain under the administration of the Federal agency that administered them before their designation. From the date of enactment until December 31, 1983, the lands classified under the National Wilderness Preservation system remained open to mining claim location. On January 1, 1984, wilderness lands were withdrawn from all forms of appropriation under the public land laws, including the Mining Law, subject to valid existing rights. For any wilderness designations made after that date, the date of the particular wilderness area designation is the critical date for determining valid existing rights. Section 603 of FLPMA gave the Secretary of the Interior fifteen years to review roadless areas of 5,000 or more acres of BLM administered public lands and recommend to the President those areas suitable for wilderness designation. During the review, lands are to be managed in a manner so as not to impair the suitability of the areas for wilderness designation, but are still open to the operation of the Mining Law. See discussion of section 603 of FLPMA above. After a wilderness

designation on BLM administered public lands, the Wilderness Act provisions described above apply to the BLM's administration of those lands. **Statute**: 16 U.S.C. §§ 1131 1136, 43 U.S.C. § 1782. **Regulation:** 43 C.F.R. Subpart 3802 (surface management during wilderness review); 43 C.F.R. Subpart 3823 (2004) (Prospecting, Mineral Locations, and Mineral Patents within National Forest Wilderness).

b. Wild & Scenic Rivers—The Wild and Scenic River Act set aside segments of eight rivers to protect their "outstandingly remarkable" values, proposed segments of 27 additional rivers for designation, and authorized the Agriculture and Interior secretaries to propose segments of additional rivers for future designation. The Act withdraws from mineral entry all lands constituting the bed or bank or within one quarter mile of the bank of any designated river. The Act also temporarily withdraws from mineral entry lands within one quarter mile of the banks of rivers *proposed* for designation. Patents issued for valid existing rights convey title only to that use of the surface that is "reasonably required" for carrying on prospecting or mining operations. **Statute:** 16 U.S.C. §§ 1271 1287.

c. National Monuments, National Conservation Areas, National Recreational Areas, National Preserves—Congress creates national monuments, national conservation areas, national recreational areas, and national preserves under specific acts that usually withdraw the lands from the operation of the Mining Law, subject to valid existing rights. Two examples are the Mojave National Preserve withdrawn under the California Desert Protection Act, 16 U.S.C. § 410aaa 41, and the Jemez National Recreational Area, 16 U.S.C. § 460jjj. Consult the specific legislation for the lands for which you are making a land status determination.

d. Alaska Native Claims Settlement Act of 1971—ANCSA authorized the transfer of approximately 44 million acres of land to Alaska Natives (a little more than 10% of the entire state), along with millions of dollars in the form of an Alaska Native Fund, comprised, in part, of revenues from mineral leases in Alaska. The Act also authorized the Secretary of the Interior to withdraw 80 million acres of land to be considered for inclusion in the national parks, wildlife refuges, national forests, and wild and scenic rivers systems. In order to carry out the transfer of land to Alaska Natives, ANCSA first extinguished all aboriginal titles and claims to such title in Alaska based on use and occupancy, then provided for the withdrawal of certain categories of lands, subject to valid existing rights, from appropriation under the public land laws. Depending on the category of lands, the public land laws from which the lands were withdrawn included the mining and mineral leasing laws. This withdrawal was necessary in order that such lands might be available for selection by the 13 Native regional or 220 village corporations chartered under ANCSA and state law, as well as certain other groups, and individual Alaska Natives. The regional corporations were given the subsurface estate of most of the lands, with certain exceptions when subsurface rights were already reserved. Exploration, development and removal of minerals from the subsurface located within the boundaries of any

Native village are subject to the consent of the village corporation, and a large percentage of the revenues realized from the subsurface estate owned by any regional corporation are shared with all of the other geographic regional corporations according to their population. Valid rights to any land or minerals, including lease, contract, permit, right of way or easement existing prior to the withdrawals remain subject to the administration (unless waived) of the State or United States, with the Native village or regional corporation patentees under ANCSA succeeding to interests owned by such authorities. **Statute**: 43 U.S.C. §§ 1601 *et seq*.; *see* 43 U.S.C. § 1610 regarding public land withdrawals.

e. Power Sites—the Federal Power Act of 1920 authorized the withdrawal of public lands for power development or power sites. The Mining Claims Rights Restoration Act of 1955, also known among BLM staff as P.L. 359, **opens** public lands that were withdrawn or reserved for power development or power sites to the operation of the Mining Law, with some restrictions. **Statute:** Federal Power Act, 41 Stat. 1063, 16 U.S.C. § 818; Mining Claims Rights Restoration Act, 30 U.S.C. §§ 621 625. **Regulation:** 43 C.F.R. part 3730; 43 C.F.R. § 3811.2 6 (2004). *See United States v. Eno*, 171 IBLA 69 (2007).

f. Small Tract Act—this Act authorized the Secretary of the Interior to sell vacant, unreserved public lands in parcels not exceeding five (5) acres to certain specified persons as long as the lands at issue were identified as chiefly valuable for residence, recreation, business, or community site purposes, and as long as the Secretary found that such sale (a) would not unreasonably interfere with the use of the water for grazing purposes; (b) nor unduly impair the protection of watershed areas; and (c) were in reasonably compact form. As mentioned above, patents under the Act reserved all minerals to the United States. Under regulations promulgated in 1955, lands classified under the Act were segregated from mineral entry. For pre 1955 claims, it has been held that the Secretarial act of classifying land pursuant to the Act was sufficient to segregate the land from mineral entry. After lands are conveyed under this Act, the mineral reservation is closed to mineral entry. Although the Small Tract Act was repealed by FLPMA, section 701(c) of FLPMA states that all withdrawals, reservations, classifications, and designations in effect when FLPMA was enacted will remain in full force and effect until modified under other FLPMA provisions or by other law. **Statute:** Act of June 1, 1938, 52 Stat. 609, as amended by 59 Stat. 467 and 68 Stat. 239.

g. Wildlife Refuges—many fish and wildlife refuges have been created by way of executive order or public land order. Most of these orders withdrew refuges from the mining and mineral leasing laws, but the relevant order establishing the refuge must be consulted to verify whether refuge lands remain open to mineral entry. When Congress consolidated refuges into the National Wildlife Refuge System in 1966, it provided that the mining and mineral leasing laws would continue to apply within the System to the same extent as before, unless lands are subsequently withdrawn. Regulations at 50 C.F.R. § 27.64 generally prohibit prospecting, locating, or filing mining claims within refuges. **Statute:** 16 U.S.C. § 688dd(c). **Regulation:** 43 C.F.R. § 3809.2(b)

(2004) (3809 surface management regulations do not apply to National Wildlife Refuge lands).

h. Town Sites—As a revenue raising measure to aid the Civil War effort (the 1863 Act was entitled, "An Act For Increasing Revenue by Reservation and Sale of Town Sites on Public Lands"), Congress authorized the President to reserve as town sites lands from the public domain "on the shores of harbors, at the junction of rivers, important portages, or any natural or prospective centres of population," which would then be surveyed into lots and sold at public auction to the highest bidder (but not less than appraised value). Unoccupied public domain lands within town site boundaries remain open to location until the United States grants a town site patent to a private individual. Town site patents are subject to valid existing mining claims or possessions and do not convey title to "any vein of gold silver, cinnabar, copper, or lead." Thus, after issuance of a town site patent, it is possible but rare that new claims could be located within the boundaries of a town site. The Department is reluctant to disturb a town site patent and the IBLA requires that a discovery of a valuable mineral deposit must be evidenced by the clearest proof. **Statutes (in part):** Act of March 3, 1863, 12 Stat. 754; Act of March 3, 1865, 13 Stat. 529, 530; Act of March 3, 1877, 19 Stat. 392; Act of March 3, 1891, 26 Stat. 1095, 1101. Repealed by section 703 of FLPMA.